

**EXHIBIT 8**  
**VIOLATION OF  
SUPERVISED  
RELEASED,  
APRIL 21, 2008**

Received  
U.S. Marshals

FILED

APR 21 2008

UNITED STATES DISTRICT COURT

2008 APR 21 AM 10:42

(b) (6)

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

CASE NUMBER:

USM NUMBER:

(b) (6)

v.

(b) (6)

Defendant's Attorney:

(b) (6)

**THE DEFENDANT:**

X admitted guilt to violation of charge numbers Two, Three and Four of the term of supervision.

\_\_\_\_\_ was found in violation of charge number(s) \_\_\_\_\_ after denial of guilt.

<u>Violation Charge Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
Two	Failure to submit written monthly report.	June 2004
Three	Failure to report to the Probation Office.	June 2004
Four	Failure to notify ten days prior to any change in residence.	June 2004

The defendant is sentenced as provided in pages 2 through 2 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

X The United States abandoned charge number One, the Court dismissed charge number One, and defendant is discharged as to such violation charge.

*It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.*

Date of Imposition of Sentence: April 21, 2008

CERTIFIED A TRUE COPY

(b) (6)

(b) (6)

SENIOR UNITED STATES DISTRICT JUDGE

DATE: April 21, 2008

Defendant  
Case No.:

(b) (6)

STATEMENT OF REASONS  
(Not for Public Disclosure)

- ☒ The court adopts the factual findings and guideline application in the presentence report.  
OR  
☐ The court adopts the factual findings and guideline application in the presentence report, except (see attachment, if necessary).

Guideline Range Determined by the Court:

Total Offense Level: 6

Criminal History Category: II

Imprisonment Range: 1 to 7 months

Supervised Release Range: 2 to 3 years

Fine Range: \$500.00 to \$5,000.00

- ☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: \$ N/A

- ☐ Discretionary restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(a)(B)(ii). (or in offenses committed before April 23, 1996, pursuant to 18 U.S.C. § 3663(d)).
- ☐ Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because the number of identifiable victims is so large as to make restitution impracticable, pursuant to 18 U.S.C. § 3663A(c)(3)(A).
- ☐ Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because determining complex issues of fact and related to the cause of amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process, pursuant to 18 U.S.C. § 3663A(c)(3)(B).
- ☐ For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.
- ☐ Partial restitution is ordered, pursuant to 18 U.S.C. § 3553(c), for the following reason(s):
- ☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

- ☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reasons:

OR

- ☐ The sentence is required by statute.

OR

- ☐ The sentence departs from the guideline range

☐ upon motion of the government, as a result of a defendant's substantial assistance.

☐ for the following specific reason(s)  
FOIA 2013-2789

010390

Defendant:  
Case No.:

(b) (6)

Judgment - Page 2 of 2

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of eight (8) months, with credit for time served since February 20, 2008.

\_\_\_\_\_ The Court makes the following recommendations to the Bureau of Prisons:

  X   The defendant is remanded to the custody of the United States Marshal.

\_\_\_\_\_ The defendant shall surrender to the United States Marshal for this district:

\_\_\_\_\_ at \_\_\_\_\_ a.m. p.m. on \_\_\_\_\_

\_\_\_\_\_ as notified by the United States Marshal.

\_\_\_\_\_ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

\_\_\_\_\_ before 2 p.m. on \_\_\_\_\_

\_\_\_\_\_ as notified by the United States Marshal.

\_\_\_\_\_ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on 10/7/08 to CCA at \_\_\_\_\_  
M. Ruel with a certified copy of this judgment.

(b) (6)

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL



**EXHIBIT 9**  
**I-130 + I-485**  
**FILED BY U.S**  
**CITIZEN**  
**SPOUSE ON**  
**SEPT 17, 2008**



Receipt Number: <b>(b) (6)</b>		Case Type: I-130 - Petition for Alien Relative
Received Date: September 17, 2008	Priority Date:	Petitioner: <b>(b) (6)</b>
Notice Date: December 23, 2008	Page 1 OF 1	Beneficiary: <b>(b) (6)</b>

<b>(b) (6)</b>	Notice Type:	Receipt Notice
	Amount Received:	\$355.00

The above application/petition has been received. Please notify us immediately if any of the above information is incorrect. Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

If you have questions, you may call the BCIS National Customer Service Center at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at [www.BCIS.gov](http://www.BCIS.gov) where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U S BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. Box 648000

LEE'S SUMMIT, MO 64002

National Customer Service Center: 1-800-375-5283



5397341

A539734102

FOIA 2013-2789

Form I-797C (Rev. 01/31/05) N  
010393



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## My Case Status

Para tener acceso a este sitio en Español, presione aquí

### Your Current Case Status for Form I130, IMMIGRANT PETITION FOR RELATIVE, FIANC(E), OR ORPHAN

Enter your receipt number

(b) (6)  
[Check Status](#)



Your Case Status:  
Document production or Oath Ceremony

### Document production or Oath Ceremony

On October 21, 2008 we mailed the document to the address we have on file. You should receive the new document within 30 days. If you do not, or if you move before you get it, call customer service at 1-800-375-5283.

This step applies to applications that result in an applicant receiving a card (such as a green card) or other document (such as a naturalization certificate, refugee travel documents or advance parole). Applications will be in this step from the time the order to produce the card/document is given until the card/document is produced and mailed to the applicant. You can expect to receive your card/document within 30 days of the approval of your application.

You can register for automatic case status updates by email and text message by creating an account.

### Processing Times

1). Select a form type

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# THE UNITED STATES OF AMERICA

Receipt Number: <b>(b) (6)</b>		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status
Received Date: September 17, 2008	Priority Date:	Applicant: <b>(b) (6)</b>
Notice Date: December 23, 2008	Page 1 OF 1	ASC Code: 3

<b>(b) (6)</b>	Notice Type: Receipt Notice
	Amount Received: \$1,010.00

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

## BIOMETRICS-

The next step is to have your biometrics taken, if required, at a US Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

## PLEASE NOTE-

**USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT-** You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

## WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.

## CASE STATUS-

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the United States Citizenship and Immigration Services website at [www.USCIS.gov](http://www.USCIS.gov) where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U. S. Citizenship and Immigration Services  
P.O. Box 648000  
LEE'S SUMMIT, MO 64002  
National Customer Service Center: 1-800-375-5283





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Para tener acceso a este sitio en Español, presione aquí

**Your Current Case Status for Form I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS**

Enter your receipt number

(b) (6)

[Check Status](#)



Your Case Status:  
Document production or Oath Ceremony

**Document production or Oath Ceremony**

On November 5, 2008 we mailed the document to the address we have on file. You should receive the new document within 30 days. If you do not, or if you move before you get it, call customer service at 1-800-375-5283.

This step applies to applications that result in an applicant receiving a card (such as a green card) or other document (such as a naturalization certificate, refugee travel documents or advance parole). Applications will be in this step from the time the order to produce the card/document is given until the card/document is produced and mailed to the applicant. You can expect to receive your card/document within 30 days of the approval of your application.

You can register for automatic case status updates by email and text message by creating an account.

**Processing Times**

1). Select a form type

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**EXHIBIT 15**  
**TEMPORARY**  
**PROTECTED**  
**STATUS FILED**  
**FOR HAITI**  
**EARTHQUAKE**  
**ON FEB 16, 2010**

# THE UNITED STATES OF AMERICA

NOTICE TYPE Receipt		NOTICE DATE February 19, 2010
CASE TYPE I-765, Application for Employment Authorization		USCIS ALIEN NUMBER (b) (6)
RECEIPT NUMBER (b) (6)	RECEIVED DATE February 16, 2010	PAGE 1 of 1
		DATE OF BIRTH February 23, 1978

## APPLICANT/PETITIONER NAME AND MAILING ADDRESS

(b) (6)

## PAYMENT INFORMATION:

Application/Petition Fee: \$340.00  
Biometrics Fee: \$0.00  
Total Amount Received: \$340.00  
Total Balance Due: \$0.00

The above application/petition has been received by our office and is in process.

Please verify your personal information listed above and immediately notify the USCIS National Customer Service Center at the phone number listed below if there are any changes.

Please note that if a priority date is printed on this notice, the priority does not reflect earlier retained priority dates.

If you have questions about possible immigration benefits and services, filing information, or USCIS forms, please call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833. Please also refer to the USCIS website: [www.uscis.gov](http://www.uscis.gov)

If you have any questions or comments regarding this notice or the status of your case, please contact our customer service number.

You will be notified separately about any other case you may have filed.

## USCIS Office Address:

USCIS  
Nebraska Service Center  
P.O. Box 82521  
Lincoln, NE 68501-2521

## USCIS Customer Service Number:

(800)375-5283  
APPLICANT COPY



# THE UNITED STATES OF AMERICA

NOTICE TYPE <b>Receipt</b>		NOTICE DATE February 19, 2010
CASE TYPE I-821, Application for Temporary Protected Status		USCIS ALIEN NUMBER (b) (6)
RECEIPT NUMBER (b) (6)	RECEIVED DATE February 16, 2010	PAGE 1 of 1
		DATE OF BIRTH February 23, 1978

## APPLICANT/PETITIONER NAME AND MAILING ADDRESS

(b) (6)

## PAYMENT INFORMATION:

Application/Petition Fee: \$50.00  
 Biometrics Fee: \$80.00  
 Total Amount Received: \$130.00  
 Total Balance Due: \$0.00

The above application/petition has been received by our office and is in process.

Please verify your personal information listed above and immediately notify the USCIS National Customer Service Center at the phone number listed below if there are any changes.

Please note that if a priority date is printed on this notice, the priority does not reflect earlier retained priority dates.

If you have questions about possible immigration benefits and services, filing information, or USCIS forms, please call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833. Please also refer to the USCIS website: [www.uscis.gov](http://www.uscis.gov)

If you have any questions or comments regarding this notice or the status of your case, please contact our customer service number.

You will be notified separately about any other case you may have filed.

## USCIS Office Address:

USCIS  
 Nebraska Service Center  
 P.O. Box 82521  
 Lincoln, NE 68501-2521

## USCIS Customer Service Number:

(800)375-5283  
 APPLICANT COPY





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**EXHIBIT 16**  
**HAITIAN**  
**COMMUNITY**  
**LETTER, FEB 23,**  
**2010**

To : Whom it may concern

From : The Haitian Community at (b) (6)

Date : February 23, 2010

Subject : Haitians in Detention

Dear Sir/Madam,

This memorandum is in relation of our detriment at (b) (6) Detention Center subsequent to 45 days after our country, *Haiti*, has been devastated by a terrible *Earthquake of 7.0* magnitudes on January 12, 2010.

We believe that we are among the Haitians suffering for the lost of over 200,000 deaths in *Haiti*. We have been grieving since then, as well as, our families living in the U.S territory have been devastated. Detained at (b) (6) *County Jail* after a so awful natural disaster had ravaged our country is neither human nor in the interest of the International relief towards Haitians.

Our family needs us at the critical moment for support. We are asking with concern regarding our custody. We are looking towards progress. We are also capable of carrying help to our people and families in *Haiti*. Our nation needs a consolidation at this moment. This is not the time to cause any supplement suffering towards *Haitians* because we have already lost enough exposed corpses throughout the street of *Port-Au-Prince* within a 25 miles radius.

Therefore, we are entreating to your administration to look into our matter as we are being detained at (b) (6) *County Jail* while our country *Haiti* is

## **CERTIFICATE OF SERVICE**

Respectfully submitted on Feb 23<sup>rd</sup> 2010; also served a true copy of the foregoing Memorandum in person ~~or~~ by first-class mail, postage prepaid, and placing the same in the hands of the (b) (6) Detention Center Officials; and addressed as follow:

(b) (6)

**And to our all families suffering in the *United States* after our lost due to the *Earthquake* that ravaged *Haiti* on January 12, 2010.**

merely at a stage of sorrowfulness. In the meantime, shall the *Department of Homeland Security* (DHS) has already taken the necessary step to release all the *Haitians* into *ICE custody*, we praying your office to instruct the field office of Atlanta, Georgia to follow up with *DHS* instruction in a brief delay.

*The Ice Field Office District Director address detaining us is the following:*

(b) (6)

*The Deportation Officer responsible for our removal and release is the following:*

(b) (6)

*The Facility address where we are being detained is the following:*

(b) (6)

Respectfully submitted from the Haitian Community through:

(b) (6)

**EXHIBIT 17**  
**ANSWER**  
**LETTER FOR**  
**EARTHQUAKE**  
**FROM (b) (6)**  
**(b) (6) ON**  
**MARCH 12, 2010**

(b) (6)

U.S. Department of Homeland Security

(b) (6)

(b) (6)



## U.S. Immigration and Customs Enforcement

March 12, 2010

The Haitian Community at Etowah County Detention Center (ECDC)

(b) (6)

### Re: Haitians in ICE Custody

Dear Haitian Community:

The (b) (6) Field Office has received your correspondence dated February 23, 2010, regarding Haitian Nationals in custody at the (b) (6) Detention Center.

On January 12, 2010, a 7.0 magnitude earthquake in Haiti resulted in the loss of many lives and significant damage to Haiti's infrastructure. As a result, on January 13, 2010, ICE temporarily suspended all removals to Haiti. On January 15, 2010, U.S. Department of Homeland Security Secretary Napolitano announced the designation of Temporary Protected Status (TPS) for Haitian nationals who were in the United States as of January 12, 2010. On January 28, 2010, you were given copies of Secretary Napolitano's press release, Federal Register Notice / TPS, Application for Temporary Protected Status (I-821), and Application for Employment Authorization (I-765) at the (b) (6) County Detention Center.

As per the Immigration Nationality Act Section 241, once an alien is ordered removed, the alien shall be removed from the United States within a period of ninety (90) days. An order of removal made by the immigration judge at the conclusion of proceedings under Section 240 of the Immigration Nationality Act (INA) shall become final:

- (a) Upon dismissal of an appeal by the Board of Immigration Appeals (BIA);
- (b) Upon waiver of appeal by the respondent;
- (c) Upon expiration of the time allotted for an appeal if the respondent does not file an appeal with that time;
- (d) If certified to the Board or Attorney General, upon the date of the subsequent decision ordering removal;
- (e) If an immigration judge orders an alien removed in the alien's absence, immediately upon entry of such order; or
- (f) If an immigration judge issues an alternate order of removal in connection with a grant of voluntary departure, upon overstay of the voluntary departure period, or upon the failure to post a required voluntary departure bond within five (5) business days. If the respondent has filed a timely appeal with the Board, the order shall become final upon an order of removal by the Board or the Attorney General, or upon overstay of the voluntary departure period granted or reinstated by the Board or the Attorney General.

Therefore, any detainees subject to mandatory detention pursuant to 236 (c) of the INA, will have a Post Order Custody Review conducted within ninety (90) days of their final order, in accordance with Section 241 of the INA.

Sincerely,

(b) (6)

# **EXHIBIT 18**

**I-612**

**APPLICATION TO  
WAIVE FOREIGN  
RESIDENCY  
REQUIREMENTS  
ON MARCH 8,  
2010**



# THE UNITED STATES OF AMERICA

<b>(b) (6)</b>		CASE TYPE I612 APPLICATION TO WAIVE FOREIGN RESIDENCE REQUIREMENTS
RECEIVED DATE March 8, 2010	PRIORITY DATE	APPLICANT (b) (6) <b>(b) (6)</b>
NOTICE DATE March 9, 2010	PAGE 1 of 1	
<b>(b) (6)</b>		Notice Type: Receipt Notice  Amount received: \$ 545.00

**Receipt Notice.** This notice confirms that USCIS received your application or petition ("this case") as shown above. If any of the above information is incorrect, please immediately call 800-375-5283 to let us know. This will help avoid future problems.

This notice does not grant any immigration status or benefit. It is not even evidence that this case is still pending. It only shows that the application or petition was filed on the date shown.

**Processing time.** Processing times vary by kind of case. You can check our website at [www.uscis.gov](http://www.uscis.gov) for our current "processing times" for this kind of case at the particular office to which this case is or becomes assigned. On our websites "case status online" page, you can also view status or sign up to receive free e-mail updates as we complete key processing steps on this case. During most of the time this case is pending, however, our systems will show only that the case has been received, and the processing status will not have changed, because we will be working on other cases that were filed earlier than this one. We will notify you by mail, and show in our systems, when we make a decision on this case or if we need something from you. If you do not receive an initial decision or update from us within our current processing time, check our website or call 800-375-5283. Please save this notice, and any other notice we send you about this case, and please make and keep a copy of any papers you send us by any means, along with any proof of delivery to us. Please have all these papers with you if you contact us about this case.

**If this case is an I-130 Petition.** Filing and approval of a Form I-130, Petition for Alien Relative, is only the first step in helping a relative immigrate to the United States. The beneficiaries of a petition must wait until a visa number is available before they can take the next step to apply for an immigrant visa or adjustment of status to lawful permanent residence. To best allocate resources, USCIS may wait to process forms I-130 until closer to the time when a visa number will become available, which may be years after the petition was filed. Nevertheless, USCIS processes forms I-130 in time not to delay relatives ability to take the next step toward permanent residence once a visa number does become available. If, before final action on the petition, you decide to withdraw your petition, your family relationship with the beneficiary ends, or you become a U.S. citizen, call 800-375-5283.

**Applications requiring biometrics.** In some types of cases USCIS requires biometrics. In such cases, USCIS will send you a SEPARATE appointment notice with a specific date, time and place for you to go to a USCIS Application Support Center (ASC) for biometrics processing. You must WAIT for that separate appointment notice and take it (NOT this receipt notice) to your ASC appointment along with your photo identification. Acceptable kinds of photo identification are: a passport or national photo identification issued by your country, a drivers license, a military photo identification, or a state-issued photo identification card. If you receive more than one ASC appointment notice, even for different cases, take them both to the first appointment.

**If your address changes.** If your mailing address changes while your case is pending, call 800-375-5283 or use the "Online Change of Address" function on our website. Otherwise, you might not receive notice of our action on this case.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SVC  
 CALIFORNIA SERVICE CENTER  
 P. O. BOX 30111  
 LAGUNA NIGUEL CA 92607-0111  
 Customer Service Telephone: (800) 375-5283





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Your Current Case Status for **(b) (6)**, APPLICATION TO WAIVE FOREIGN  
RESIDENCE REQUIREMENTS

Enter your receipt number

(b) (6)

Check Status

Your Case Status:  
Initial Review



Initial Review

On March 8, 2010, we received this I612 APPLICATION TO WAIVE FOREIGN RESIDENCE REQUIREMENTS, and mailed you a notice describing how we will process your case. Please follow any instructions on this notice. You will be notified by mail when a decision is made, or if the office needs something from you. If you move while this case is pending, please use our Change of Address online tool to update your case with your new address or contact our customer service center at 1-800-375-5283.

During this step, USCIS initiates the background checks of the applicant/petitioner and identifies issues that may need to be addressed either during an interview or by asking the applicant/petitioner to submit additional information or documentation. USCIS reviews applicant's/petitioner's criminal history, determines if there are national security concerns that need to be addressed, and reviews the application/petition for fraud indicators.

If you have filed an I-589, I-589, I-751, I-600, I-90, I-921, I-131, I-130 or I-765, you can

You can register for automatic case status updates by email and text message by [creating an account](#).

Processing Times

1). Select a form type

Select one...

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UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION COURT

(b) (6)

In The Matter of:

(b) (6)

Petitioner,

§  
§  
§  
§  
§  
§

In Re: File No.: (b) (6)

*In Removal Proceedings*

**MOTION TO RECTIFY AND ADJUST STATUS UNDER 245(i)**

1. COMES now, Petitioner, pro se, (b) (6) is moving the Immigration Court of (b) (6) to finalize the **Adjustment of Status** ordered by Judge (b) (6) since *May 24, 2004* at (b) (6) after an individual hearing.
2. Under 8 U.S.C § 1502 of *LIFE ACT AMENDMENT*, Aliens who were physically present in the United States on *December 21, 2000*, are eligible to apply for Adjustment of Status under INA § 245(i), provided an Immigrant Visa Petition (I-130) was filed for them by April 30, 2001.
3. Concerning the date mentioned (*by April 30, 2001*), there is what related to the Extension of INA 245(i) by LIFE ACT under the Legal Immigration Family Equality Act. Whereas, the Service, by that time INS, amended that petitions and applications filed pursuant to Life Act, which are postmarked by *April 30, 2001* will be considered timely filed if the postmark is missing or illegible, the petition or application will be considered timely filed if physically received by INS (now USCIS) by the closed of business of *May 3, 2001*.
4. Since materials filed by a private courier service such as Federal Express are not postmarked, they will also be deemed timely filled if received by May 3, 2001. *See April 26, 2001 memo by William Yates, INS, Deputy Executive Associate Commissioner for Field Operations. This memo is digested in 78 Interpreter Releases 774-775. (May 7, 2001)*

*Reference Book: Immigration Law and Defense (National Lawyer Guild) Section § 4:158*

## CONCLUSION

- A. Therefore, in this case of (b) (6) Extension of Ina 245(i) by life Act shall apply legally, fairly, and justifiably in order to adjust Petitioner (b) (6) (b) (6) status as a permanent resident.
- B. Reasons: the I-130 Petition filed by United States Citizen Sister in April 2001 has been approved since April 9, 2009 and was received exactly on *May 3, 2001* with a Priority Date; see proof on the Approval Notice enclosed.
- C. Wherefore, we are moving the *Immigration Court of* (b) (6) to finalize the Adjustment of Status order by Judge (b) (6) since May 24, 2004 at Bradenton Florida.
- D. In the meantime, spouse in *Massachusetts* is making considerable effort to obtain a receipt number on the J-1 Waiver filed on Form I-612, although, the Court of (b) (6) on *May 24, 2004*, had never mentioned such waiver in this case, whereas, Petitioner has been detained for 17 months over an issue not presented to him by the Immigration Court.
- E. Priority dates. The priority date of an applicant who is seeking the allotment of an immigrant visa number under one of the preference classes specified in section 203(a) or 203(b) of the Act by virtue of a valid visa petition approved in his or her behalf shall be fixed by the date on which such approved petition was filed.

Respectfully submitted this 15<sup>th</sup> day of March, 2010

(b) (6)

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT

(b) (6)

In The Matter of:

(b) (6)

Respondent,

*In Removal Proceedings*

§  
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§

In Re: File No.: (b) (6)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within forgoing *Motion to Rectify* relating by U.S First Class Mail with proper postage affixed thereto and addressed as follows:

Assistant Chief of Counsel

(b) (6)

Department of Homeland Security (DHS)

(b) (6)

This 15<sup>th</sup> day of March, 2010

(b) (6)

**EXHIBIT 20**  
**MOTION TO**  
**INTRODUCE J-1**  
**WAIVER, MARCH**  
**22<sup>ND</sup>, 2010**

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION COURT

(b) (6)

In The Matter of:

(b) (6)

Petitioner,

§  
§  
§  
§  
§  
§

In Re: File No. (b) (6)

*In Removal Proceedings*

**MOTION TO INTRODUCE THE J-1 WAIVER**

1. COMES now, Petitioner, pro se, (b) (6) is moving the Immigration Court of (b) (6) to finalize the **Adjustment of Status** ordered by Judge (b) (6) since May 24, 2004 at (b) (6) after an individual hearing, without mentioning a *J-1 Waiver*.
2. Subsequently, on February 23, 2009, Immigration Judge (b) (6) along with DHS Counsel, (b) (6) had instigated a *J-1 Waiver* within the *Removal Proceedings* not previously mentioned by the Immigration Court as Petitioner was ordered to adjust his status from *J-1 to Permanent Resident* in light of some I-130 pending.
3. Petitioner spouse, (b) (6) had given all the information *plus* extra money to Attorney (b) (6) since April 2009 in order to facilitate that *J Waiver*. However, (b) (6) **has not been able to provide** proof of filing a *J-1 Waiver* with USCIS (*I-797 / Notice of Action*) until present date.
4. Petitioner has filed a complaint with the *Bar Association* against Attorney (b) (6) (b) (6) after 9 months of asking for proof of the *J-1 Waiver*; however, Attorney (b) (6) continues to allege that the *J-Waiver* is still pending with USCIS in Texas without proof of *I-797 (Notice of Action)*. Spouse and family are continuing on searching for the *J-Waiver* filed by Attorney (b) (6) if never truly filed will take the next **LEGAL STEP** against that Attorney.



## CONCLUSION

- A. Because of the misleading circumstances on this case, (b) (6) Petitioner never had an opportunity to make an intelligent election between the diametrically opposed courses required as a matter of strict law. When considering all the circumstances of the case, we think that to bar Respondent release out of custody, simply because of the adjudication of a J-1 waiver, is unconstitutionality and unfairness. This is nothing less than an intelligent waiver that is required by elementary fairness. To hold otherwise would be to entrap Respondent. See, this precedent case " 341 U.S. at 47, 71 S. Ct. at 556."
- B. We also can add that in this case of J-1 waiver issue, there is the big factor of MISLEADING on the J-1 waiver. In some cases, the courts have offered relief to an alien who was misled by information obtained from the Government. *Hetzer v. INS*, 420 F.2d 357 (9th Cir. 1970); *In Re Petition of La Voie*, 349 F. Supp. 68 (D.V.I. 1972); *Campbell v. Esperdy*, 287 F. Supp. 92 (S.D.N.Y. 1988); see also *Moser v. United States*, 341 U.S. 41 (1951). In these cases, similar to the one of Petitioner, (b) (6) (b) (6) presently before us, the alien was directly given misinformation on which he relied. The proper form of relief for the respondent is to apply for a waiver of the requirement under section 212(e) of the Act.
- C. Decades ago, some Circuit Court held that: "The legal effect of the error of the Service is to entitle the plaintiff to appropriate relief which this Court has jurisdiction to grant. See, 28 U.S.C. 2201, 2202; 5 U.S.C. 701 et seq.; *Hom Sin v. Esperdy*, 239 F. Supp. 903, 906-907 (S.D.N.Y. 1965); *Moser v. United States*, 341 U.S. 41, 71 S. Ct. 553, 95 L. Ed. 729 (1951). Based on these evidences the J-1 waiver issue should have been acquitted and release Respondent to be with his United Citizen Spouse in (b) (6) as gaining appropriate relief, part of the "Misleading Prong" of the J-1 Waiver issue.
- D. Furthermore, when the status of the I-130 + I-485 jointly filed on behalf of Petitioner, (b) (6) both application is in the last step of approval to render Permanent Residency to Petitioner (Document Production or Oath Ceremony (see proof of Case Status)). Thus, Petitioner believes that he would have already possessed his Permanent Residency Card if it was not for these long 17 months of detention.
- E. Should Petitioner continues to be detained by the Department of Homeland Security and ICE after being misled of a J-1 Waiver issue by the DHS Attorney since May 24, 2004 and being deceived by an Attorney? We will leave that answer and decision to the discretion of the Honorable Immigration Court of (b) (6) (See all the Documentations (I-130; I-485; I-612, Case Status))

Respectfully submitted this 22<sup>nd</sup> day of March, 2010

(b) (6)



UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT

(b) (6)

In The Matter of:

(b) (6)

Respondent,

*In Removal Proceedings*

In Re: File No.:

(b) (6)

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within forgoing *Motion to Introduce The J-1 Waiver* by U.S First Class Mail with proper postage affixed thereto and addressed as follows:

Assistant Chief of Counsel

(b) (6)

Department of Homeland Security (DHS)

(b) (6)

This 22<sup>nd</sup> day of March, 2010

\_\_\_\_\_  
NOTARY PUBLIC

(b) (6)

## EOIR FOIA Processing (EOIR)

---

**From:** Fong, Thomas (EOIR)  
**Sent:** Friday, March 05, 2010 10:11 AM  
**To:** Moutinho, Deborah (EOIR)  
**Cc:** Keller, Mary Beth (EOIR); Weil, Jack (EOIR)  
**Subject:** FW: On Line Training Today

FYI in regard to the Anger Management Training taken on-line by U (b) (6) and U (b) (6)

Thomas Y.K. Fong  
Assistant Chief Immigration Judge  
Immigration Court/EOIR/DOJ  
606 South Olive Street, 15th Floor  
Los Angeles, CA 90014  
(213)894-3906 (b) (6)  
[thomas.fong@usdoj.gov](mailto:thomas.fong@usdoj.gov)

-----Original Message-----

**From:** Fong, Thomas (EOIR)  
**Sent:** Friday, March 05, 2010 7:09 AM  
**To:** (b) (6) (EOIR); (b) (6) (EOIR)  
**Subject:** RE: On Line Training Today

Good, (b) (6) noted the same and ran me off a copy of the materials although the verbal "fill in" as (b) (6) noted was not included. Tom

Thomas Y.K. Fong  
Assistant Chief Immigration Judge  
Immigration Court/EOIR/DOJ  
606 South Olive Street, 15th Floor  
Los Angeles, CA 90014  
(213)894-3906 (b) (6)  
[thomas.fong@usdoj.gov](mailto:thomas.fong@usdoj.gov)

-----Original Message-----

**From:** (b) (6) (EOIR)  
**Sent:** Thursday, March 04, 2010 2:53 PM  
**To:** Fong, Thomas (EOIR); (b) (6) (EOIR)  
**Subject:** RE: On Line Training Today

It was helpful.

Thank You!

(b) (6)

-----Original Message-----

**From:** Fong, Thomas (EOIR)  
**Sent:** Thursday, March 04, 2010 11:49 AM  
**To:** (b) (6) (EOIR); (b) (6) (EOIR)

6. COMPLAINT CLOSED

-----Original Message-----

From: Fong, Thomas (EOIR)  
Sent: Thursday, December 31, 2009 10:28 AM  
To: (b) (6) (EOIR)  
Subject: Preparation for your PWP with me on Jan 6  
Importance: High

(b) (6) As noted earlier in **our conversation of 12/23/09** we will discuss

A) The Letter of concern from (b) (6) on the Juvenile Detainees and your drafted proposed response.

But also, please review so we can discuss the following cases,

B) Concerns raised by DHS about IJ conduct and actions in court on cases heard & reset by you on December 2, 2009:

- 1) A (b) (6)
- 2) A (b) (6)
- 3) A (b) (6)
- 4) A (b) (6)
- 5) A (b) (6)
- 6) A (b) (6)
- 7) A (b) (6)

C) BIA remands dated cases and reason(s) remanded:

- 1) A (b) (6)
- 2) A (b) (6)
- 3) A (b) (6)
- 4) A (b) (6)
- 5) A (b) (6)
- 6) A (b) (6)
- 7) A (b) (6)
- 8) A (b) (6)

D) Complaints and/or informal requests to review by private counsels on:

- 1) (b) (6) ) Motion to Recuse
- 2) (b) (6) Motion to Recuse
- 3) (b) (6) Motion to Recuse

E) Other concerns noted in observing IJ (b) (6) in court:

- 1) (b) (6) IJ Conduct in court
- 2) (b) (6) Addressing a Motion to Recuse properly

Thomas Y.K. Fong  
Assistant Chief Immigration Judge  
Immigration Court/EOIR/DOJ  
606 South Olive Street, 15th Floor  
Los Angeles, CA 90014  
(213) 894-3906 (b) (6)  
[thomas.fong@usdoj.gov](mailto:thomas.fong@usdoj.gov)

## EOIR FOIA Processing (EOIR)

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**From:** Pomeranz, Sharon (EOIR)  
**Sent:** Friday, September 12, 2008 5:54 PM  
**To:** Keller, Mary Beth (EOIR)  
**Subject:** RE: OPR for Judge (b) (6)

Did you call her? It's not really my letter because it was written and went out when I was out of the office.

---

**From:** Keller, Mary Beth (EOIR)  
**Sent:** Thursday, September 11, 2008 3:46 PM  
**To:** Burr, Sarah (EOIR)  
**Cc:** Pomeranz, Sharon (EOIR)  
**Subject:** Re: OPR for Judge (b) (6)

Sarah

Non-responsive  
Mitk

Will call you tom.

-----  
Sent from my BlackBerry Wireless Device

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**From:** Burr, Sarah (EOIR)  
**To:** Keller, Mary Beth (EOIR)  
**Cc:** Pomeranz, Sharon (EOIR)  
**Sent:** Thu Sep 11 12:26:05 2008  
**Subject:** OPR for Judge (b) (6)

Judge (b) (6) just informed me that (b) (6) is the subject of an OPR investigation because of (b) (6) decision in (b) (6) (b) (6) a recent (b) (6) Cir. decision on FGM. This is a decision where the (b) (6) Cir. criticized (b) (6) legal analysis, not (b) (6) conduct. (b) (5)

(b) (5)

(b) (5), Sarah

## EOIR FOIA Processing (EOIR)

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**From:** Burr, Sarah (EOIR)  
**Sent:** Tuesday, May 03, 2011 10:07 AM  
**To:** Keller, Mary Beth (EOIR)  
**Subject:** RE: Emailing: (b) (6) ROI Synopsis.PDF

No, I don't need it and I will not make a copy of the summary for my records either.

-----Original Message-----

**From:** Keller, Mary Beth (EOIR)  
**Sent:** Tuesday, May 03, 2011 10:04 AM  
**To:** Burr, Sarah (EOIR)  
**Subject:** RE: Emailing: (b) (6) ROI Synopsis.PDF

I will keep this summary. I don't have the whole report, which ELR has and will keep, and I told Jeff this morning I don't want/need it at this point. If you want to see it, I am sure they can get it to you -  
mtk

-----Original Message-----

**From:** Burr, Sarah (EOIR)  
**Sent:** Tuesday, May 03, 2011 10:00 AM  
**To:** Keller, Mary Beth (EOIR)  
**Subject:** RE: Emailing: (b) (6) ROI Synopsis.PDF

Great! Do you keep a copy of this report?

-----Original Message-----

**From:** Keller, Mary Beth (EOIR)  
**Sent:** Tuesday, May 03, 2011 9:55 AM  
**To:** Burr, Sarah (EOIR)  
**Cc:** Moutinho, Deborah (EOIR)  
**Subject:** FW: Emailing: (b) (6) ROI Synopsis.PDF

Sarah,  
Finally over.  
Tx.  
mtk

-----Original Message-----

**From:** Rosenblum, Jeff (EOIR)  
**Sent:** Tuesday, May 03, 2011 8:57 AM  
**To:** Keller, Mary Beth (EOIR)  
**Subject:** Fw: Emailing: (b) (6) ROI Synopsis.PDF

MaryBeth,

Per our conversation, attached please find the OIG report concerning U (b) (6). Please let me know if you have any questions. Thanks.

---

**From:** (b) (6) (EOIR)  
**Sent:** Thursday, February 24, 2011 4:18 PM  
**To:** Smith, Gary (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6) (BIA January 6, 2011)

Reviewed file today. Response attached. Please understand I am swamped with masters, chopping down number of motions to reopen (check the number over 30 days now). Quick response. If you need more in depth let me know. As always, if we need to discuss, I am available.

(b) (6)

---

**From:** Smith, Gary (EOIR)  
**Sent:** Thursday, February 03, 2011 12:16 PM  
**To:** (b) (6) (EOIR)  
**Subject:** FW: IJC Memo - Matter of (b) (6) (BIA January 6, 2011)  
**Importance:** High

Judge (b) (6) The attached unpublished decision (Matter of (b) (6)) has been referred to the CIJ. Read the decision of the Board, your oral decision, and the extracts from the transcript and record to date upon which the Board focused in its decision. You will also have an opportunity to review the ROP. Objectively look at this case, factoring in other referred cases that have been referred by the Board to the CIJ in which you were an IJ, and provide me by **February 25, 2011**, your response regarding your handling of the case and what corrective action(s) you will personally take as an immigration judge. The Board was ostensibly concerned about the respondent's being given an opportunity to present evidence or call witnesses at a merits hearing on the factual issues of his eligibility for relief. The ROP will be returned to the (b) (6) Court and you can review it then. Thanks.

Gary W. Smith  
Assistant Chief Immigration Judge  
(703) 305-1247

---

**From:** Foreman, Suzette (EOIR)  
**Sent:** Wednesday, February 02, 2011 5:41 PM  
**To:** O'Leary, Brian (EOIR); Keller, Mary Beth (EOIR)  
**Cc:** Murphy, Kathleen (EOIR); Weil, Jack (EOIR); Moutinho, Deborah (EOIR); Foreman, Suzette (EOIR)  
**Subject:** IJC Memo - Matter of (b) (6) (BIA January 6, 2011)

Good afternoon,

Please see the attached IJC Memo from Acting Chairman David L. Neal. Thank you.

R/Suzette Foreman



## EOIR FOIA Processing (EOIR)

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**From:** Smith, Gary (EOIR)  
**Sent:** Monday, February 14, 2011 10:36 AM  
**To:** Reinfurt, Sandy (EOIR); Hatch, Paula (EOIR)  
**Cc:** Keller, Mary Beth (EOIR)  
**Subject:** FW: Master Calendar Hearings  
**Attachments:** U (b) (6) Response of 10-29-10.htm; Master Calendar (2-9-11).htm

I solicit your advice on how to proceed on this. On February 9, 2011, Judge (b) (6) conducted (b) (6) master calendar hearings and for not one of the 28 cases on his master calendar did (b) (6) record the proceedings. I checked the database and (b) (6) recorded no hearings at all that day. (There are no recordings for any of the 33 cases for that day.) I counseled (b) (6) in person on January 25<sup>th</sup> about making notes on the worksheets so that the legal assistant could enter data into the system and previously directed (b) (6) to record hearings at master calendars. This combination of not recording hearings with writing very little, if anything, on the worksheets creates a situation of there being no record of what was done at a hearing. I have previously directed (b) (6) to record hearings at master calendars (below), but (b) (6) has not followed through.

---

**From:** Smith, Gary (EOIR)  
**Sent:** Thursday, November 04, 2010 8:00 AM  
**To:** Hatch, Paula (EOIR)  
**Cc:** (b) (6) (EOIR)  
**Subject:** RE: Master Calendar Hearings

Paula, (b) (6) has in fact begun complying (see attached). I spot checked a dozen or so of the master calendar hearings and (b) (6) has begun recording them. Whether (b) (6) slumps back remains to be seen. (b) (6) is going over the list of cases. Most have been recoded to stop the asylum clock (so as not to be expedited asylum cases)—Judge (b) (6) or (b) (6) clerk contacted each attorney to determine if they wanted an expedited hearing or rejected the first available date that could be set.

---

**From:** Hatch, Paula (EOIR)  
**Sent:** Thursday, November 04, 2010 7:55 AM  
**To:** Smith, Gary (EOIR)  
**Subject:** FW: Master Calendar Hearings  
**Importance:** High

Judge Smith:

I just wanted to check the status of this directive that you sent to Judge (b) (6). Thank you, Paula

---

**From:** Smith, Gary (EOIR)  
**Sent:** Friday, October 15, 2010 4:36 PM  
**To:** (b) (6) (EOIR)  
**Subject:** Master Calendar Hearings  
**Importance:** High

Judge (b) (6)

A review of your master calendars for the last six months reveals that you have routinely not been recording the cases on the master calendars. Recording of hearings is required by: § 240(b)(4)(C) of the INA, which provides that "a complete record shall be kept of all testimony and evidence produced at the hearing; 8 CFR § 1240.9 which provides that "the hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge;" and OPPM 03-06 (see first attachment), which provides that "Immigration Judges must maintain and preserve a

thorough and complete record of the proceeding." In these cases, you have not been recording any of the hearing. Beginning immediately, I am directing you to record all master calendar hearings if the parties are present. This creates a record in the event the case is transferred to another judge, you are out sick and another judge takes over the case, or a question or issue arises concerning what occurred at the hearing. This is not optional and must be done. I will be checking to see that you record hearings.

In a hearing today, in Matter of (b) (6) A (b) (6) you apparently did not record the hearing at a master calendar and set an expedited asylum case with 44 days elapsed for individual hearing on February 2, 2010, rather than attempting to set it within the statutory requirement and agency goal of 180 days, that is, by February 28, 2011. Expedited asylum cases must be given special consideration and set within 180 days, unless the Respondent or his counsel is unable to proceed on the date posed by the Court within 180 days. You are not exempted from the requirement to follow the statute and regulation. I am directing the Court Administrator to reset this case for an individual hearing date within the 180 days, that is on or before February 28, 2011 and, if necessary, to move a non-expedited case.

Additionally, you have 23 cases in which the asylum projection is over 180 days (see second attachment). I am directing you to immediately begin working with the Court Administrator to set these cases in within the 180-day period. When you have reset them or as many of them as can possibly be reset, provide me by October 29, 2010, the new hearing dates set for these cases.

If you have any questions, you can call me, but I expect you to follow this direction.

Gary W. Smith  
Assistant Chief Immigration Judge  
(703) 305-1247



A review of your master calendars for the last six months reveals that you have routinely not been recording the cases on the master calendars. Recording of hearings is required by: § 240(b)(4)(C) of the INA, which provides that "a complete record shall be kept of all testimony and evidence produced at the hearing; 8 CFR § 1240.9 which provides that "the hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge;" and OPPM 03-06 (see first attachment), which provides that "Immigration Judges must maintain and preserve a thorough and complete record of the proceeding." In these cases, you have not been recording any of the hearing. Beginning immediately, I am directing you to record all master calendar hearings if the parties are present. This creates a record in the event the case is transferred to another judge, you are out sick and another judge takes over the case, or a question or issue arises concerning what occurred at the hearing. This is not optional and must be done. I will be checking to see that you record hearings.

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If you have any questions, you can call me, but I expect you to follow this direction.

Gary W. Smith  
Assistant Chief Immigration Judge  
(703) 305-1247

**From:** (b) (6)  
**Sent:** Friday, October 29, 2010 3:11 PM  
**To:** Smith, Gary (EOIR)  
**Cc:** (b) (6) (EOIR)

dear judge smith, as ordered by you,i pulled all of the 23 cases you were concerned about. all of the rop's have been adjusted to protect the statutory clock. since the datelines for some of the cases was so close to the 180th day, cooperation from the attorneys of record was requested and obtained. at this moment all of the attorneys agreed to waive the clocks with the exception of one. i advanced that case to a date within the 180th day as specified by you. all of the cases were returned to (b) (6) to be processed. she is out today so i have no indication whether she was able to complete all of them by cob yesterday. i should also point out that the effect on the clock for some of these cases is irrelevant since they have dual applications for relief and under the other application, the respondents are eligible for employment as well. this is a matter that has been addressed before without a final resolution. maybe thoughts for another day.

i am writing back to you at this time since the master calendar was completed at 1pm and i had to take a break to eat some lunch. i would like to submit again a reconsideration to join both calendars in one day i am sure i can work conveniently with (b) (6) in this respect. have a nice weekend.

(b) (6)

**From:** Smith, Gary (EOIR)  
**Sent:** Friday, October 15, 2010 4:36 PM  
**To:** (b) (6) (EOIR)  
**Subject:** Master Calendar Hearings

**Importance:** High

**Attachments:** 03-06.pdf; PENDING 180.tif  
Judge (b) (6)

A review of your master calendars for the last six months reveals that you have routinely not been recording the cases on the master calendars. Recording of hearings is required by: § 240(b)(4)(C) of the INA, which provides that "a complete record shall be kept of all testimony and evidence produced at the hearing; 8 CFR § 1240.9 which provides that "the hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge;" and OPPM 03-06 (see first attachment), which provides that "Immigration Judges must maintain and preserve a thorough and complete record of the proceeding." In these cases, you have not been recording any of the hearing. Beginning immediately, I am directing you to record all master calendar hearings if the parties are present. This creates a record in the event the case is transferred to another judge, you are out sick and another judge takes over the case, or a question or issue arises concerning what occurred at the hearing. This is not optional and must be done. I will be checking to see that you record hearings.

In a hearing today, in Matter of (b) (6) you apparently did not record the hearing at a master calendar and set an expedited asylum case with 44 days elapsed for individual hearing on February 2, 2010, rather than attempting to set it within the statutory requirement and agency goal of 180 days, that is, by February 28, 2011. Expedited asylum cases must be given special consideration and set within 180 days, unless the Respondent or his counsel is unable to proceed on the date posed by the Court within 180 days. You are not exempted from the requirement to follow the statute and regulation. I am directing the Court Administrator to reset this case for an individual hearing date within the 180 days, that is on or before February 28, 2011 and, if necessary, to move a non-expedited case.

Additionally, you have 23 cases in which the asylum projection is over 180 days (see second attachment). I am directing you to immediately begin working with the Court Administrator to set these cases in within the 180-day period. When you have reset them or as many of them as can possibly be reset, provide me by October 29, 2010, the new hearing dates set for these cases.

If you have any questions, you can call me, but I expect you to follow this direction.

Gary W. Smith  
Assistant Chief Immigration Judge  
(703) 305-1247

---

**From:** Smith, Gary (EOIR)  
**Sent:** Friday, October 15, 2010 4:36 PM  
**To:** (b) (6) (EOIR)  
**Subject:** Master Calendar Hearings  
**Importance:** High

Judge (b) (6):

A review of your master calendars for the last six months reveals that you have routinely not been recording the cases on the master calendars. Recording of hearings is required by: § 240(b)(4)(C) of the INA, which provides that "a complete record shall be kept of all testimony and evidence produced at the hearing; 8 CFR § 1240.9 which provides that "the hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge;" and OPPM 03-06 (see first attachment), which provides that "Immigration Judges must maintain and preserve a thorough and complete record of the proceeding." In these cases, you have not been recording any of the hearing. Beginning immediately, I am directing you to record all master calendar hearings if the parties are present. This creates a record in the event the case is transferred to another judge, you are out sick and another judge takes over the case, or a question or issue arises concerning what occurred at the hearing. This is not optional and must be done. I will be checking to see that you record hearings.

In a hearing today, in Matter of (b) (6) you apparently did not record the hearing at a master calendar and set an expedited asylum case with 44 days elapsed for individual hearing on February 2, 2010, rather than attempting to set it within the statutory requirement and agency goal of 180 days, that is, by February 28, 2011. Expedited asylum cases must be given special consideration and set within 180 days, unless the Respondent or his counsel is unable to proceed on the date posed by the Court within 180 days. You are not exempted from the requirement to follow the statute and regulation. I am directing the Court Administrator to reset this case for an individual hearing date within the 180 days, that is on or before February 28, 2011 and, if necessary, to move a non-expedited case.

Additionally, you have 23 cases in which the asylum projection is over 180 days (see second attachment). I am directing you to immediately begin working with the Court Administrator to set these cases in within the 180-day period. When you have reset them or as many of them as can possibly be reset, provide me by October 29, 2010, the new hearing dates set for these cases.

If you have any questions, you can call me, but I expect you to follow this direction.

Gary W. Smith  
Assistant Chief Immigration Judge  
(703) 305-1247



---

**From:** (b) (6) (EOIR)  
**Sent:** Wednesday, October 20, 2010 4:23 PM  
**To:** Smith, Gary (EOIR)  
**Cc:** (b) (6)@aol.com  
**Subject:** RE: Master Calendar Hearings

Dear Judge Smith,

Please do not interpret my reply as late. I did not see your e mail until Monday and have been extremely busy until now. I already located all of the cases affected by your order and I am examining the circumstances. Assuming no special reasons are present, I plan to either advance the dates as ordered by you or change the codes to a classification that would stop the clocks. The latter would be less disruptive to the calendar that is already spaced out to February 2012. I want to stress that for all practical purposes we are operating the whole calendar in this jurisdiction with three permanent judges, judges (b) (6), (b) (6) and myself. I am sure that you are aware of that fact.

My exchange with attorney (b) (6) included only the offering of a date to Feb. 20012 and at no time did he ask or demand an expedited hearing. His going to (b) (6) to ask for the clock to run was never discussed with me. It is true, however, that I pointed out to (b) (6) that I did not have any available dates in between and that because of the logistical situation of this court at the present time, I felt that moving cases around appears unprofessional. After all, as you also know, the courts of appeals are very concerned with any kind of impression that we, as judges, are following quotas of any kind that could give the impression that the judges are compromising due process issues. The (b) (6) circuit already expressed such concern in a matter of one of my colleagues in which he refused to grant a continuance to allow the final adjudication of a visa petition.

I also followed your instructions today, in my first master calendar after your e mail and recorded everything. This of course, caused delays in the disposition of the cases. The corners that I was cutting in the disposition of the MC's are not in my opinion serious enough to create any issues that cannot be realistically resolved at the next individual date. However, if you want every single discussion to be documented at the master calendar level, I will abide by your instructions forthwith.

With that in mind and realizing that we are at the present operating with two half days MC's, I would suggest for your approval, that you allow me to have one full day, preferably Wednesday, for my two master calendars. I would divide that into morning and afternoon sessions. That will liberate Fridays to handle individual hearings. This morning, to give you an idea, a total of only 40 cases took until 12:15 to complete because every case had to be recorded. It appears to me that a full calendar of 45 to 50 cases definitely is going to take longer. If the full joint master calendar can be handled in one day, that will avoid coming in the afternoon, after such a long session, to handle individual issues in either of those two half sessions. If my proposal is accepted, Fridays will be a fresh start to address only individual cases. In my opinion such a solution would be more productive. After all, during mc's, it is the judge who does most of the talking.

# Non-Responsive

# Non-Responsive

As always, I remain

Very truly yours

(b) (6) usij

---

**From:** Smith, Gary (EOIR)

**Sent:** Friday, October 15, 2010 4:51 PM

**To:** (b) (6) (EOIR)

**Subject:** RE: Master Calendar Hearings

**Importance:** High

February 2, 2012, was intended in the first sentence of the second paragraph, rather than 2010.

---

**From:** Smith, Gary (EOIR)

**Sent:** Friday, October 15, 2010 4:36 PM

**To:** (b) (6) (EOIR)

**Subject:** Master Calendar Hearings

**Importance:** High

Judge (b) (6):

A review of your master calendars for the last six months reveals that you have routinely not been recording the cases on the master calendars. Recording of hearings is required by: § 240(b)(4)(C) of the INA, which provides that "a complete record shall be kept of all testimony and evidence produced at the hearing; 8 CFR § 1240.9 which provides that "the hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge;" and OPPM 03-06 (see first attachment), which provides that "Immigration Judges must maintain and preserve a thorough and complete record of the proceeding." In these cases, you have not been recording any of the hearing. Beginning immediately, I am directing you to record all master calendar hearings if the parties are present. This creates a record in the event the case is transferred to another judge, you are out sick and another judge takes over the case, or a question or issue arises concerning what occurred at the hearing. This is not optional and must be done. I will be checking to see that you record hearings.

In a hearing today, in Matter of (b) (6) you apparently did not record the hearing at a master calendar and set an expedited asylum case with 44 days elapsed for individual hearing on February 2, 2010, rather than attempting to set it within the statutory requirement and agency goal of 180 days, that is, by February 28, 2011. Expedited asylum cases must be given special consideration and set within 180 days, unless the Respondent or his counsel is unable to proceed on the date posed by the Court within 180 days. You are not exempted from the requirement to follow the statute and regulation. I am directing the Court Administrator to reset this case for an individual hearing date within the 180 days, that is on or before February 28, 2011 and, if necessary, to move a non-expedited case.

Additionally, you have 23 cases in which the asylum projection is over 180 days (see second attachment). I am directing you to immediately begin working with the Court Administrator to set these cases in within the 180-day period. When you have reset them or as many of them as can possibly be reset, provide me by October 29, 2010, the new hearing dates set for these cases.

If you have any questions, you can call me, but I expect you to follow this direction.

**From:** Smith, Gary (EOIR)  
**Sent:** Sunday, October 24, 2010 4:59 PM  
**To:** (b) (6) (EOIR)  
**Cc:** (b) (6) @aol.com'  
**Subject:** RE: Master Calendar Hearings

Judge (b) (6) Thanks for the response. You will need to record all master calendar hearings when the parties are present, even if it takes more time. Otherwise, there is no record of what occurred. Matter of (b) (6) will need to be reset to an earlier date within the statutory 180-day period, and (b) (6) will reset that, if necessary bumping a non-expedited case. We have two new judges entering on duty on October 24<sup>th</sup> (b) (6) and December 5<sup>th</sup> (b) (6) and one additional under recruitment (budget-dependent) which will bring us up to (b) (6) judges when Judge (b) (6) returns. Judge (b) (6) out of (b) (6) has done an exclusively <st1:City w:st="on">(b) (6) docket by video for a number of months. Judges hearing the detained docket do count and absolve the other judges from having to hear detained cases. I will consider your request to have an all day master calendar, rather than two morning MC's—there are other considerations that come into play, such as other master calendar hearings going on at the same time and waiting room space, ability of the clerical staff to keep pace with data entry and notices, and the calendars of other judges. Regarding the 23 cases in which the asylum clock projection is over 180 days, those will need to reset in earlier to meet the statutory requirement—any change of an adjournment code must be totally accurate or it will result in the respondent or his counsel requesting an adjustment of the asylum clock. For that reason, they should be set in to earlier dates. Give me a report by Friday, October 29<sup>th</sup>, on the new hearing dates for those 23.

# Non-Responsive

Thanks.

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**From:** (b) (6) (EOIR)  
**Sent:** Wednesday, October 20, 2010 4:23 PM  
**To:** Smith, Gary (EOIR)  
**Cc:** (b) (6) @aol.com  
**Subject:** RE: Master Calendar Hearings

Dear Judge Smith,

Please do not interpret my reply as late. I did not see your e mail until Monday and have been extremely busy until now. I already located all of the cases affected by your order and I am examining the

circumstances. Assuming no special reasons are present, I plan to either advance the dates as ordered by you or change the codes to a classification that would stop the clocks. The latter would be less disruptive to the calendar that is already spaced out to February 2012. I want to stress that for all practical purposes we are operating the whole calendar in this jurisdiction with three permanent judges, judges (b) (6) and myself. I am sure that you are aware of that fact.

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I also followed your instructions today, in my first master calendar after your e mail and recorded everything. This of course, caused delays in the disposition of the cases. The corners that I was cutting in the disposition of the MC's are not in my opinion serious enough to create any issues that cannot be realistically resolved at the next individual date. However, if you want every single discussion to be documented at the master calendar level, I will abide by your instructions forthwith.

With that in mind and realizing that we are at the present operating with two half days MC's, I would suggest for your approval, that you allow me to have one full day, preferably Wednesday, for my two master calendars. I would divide that into morning and afternoon sessions. That will liberate Fridays to handle individual hearings. This morning, to give you an idea, a total of only 40 cases took until 12:15 to complete because every case had to be recorded. It appears to me that a full calendar of 45 to 50 cases definitely is going to take longer. If the full joint master calendar can be handled in one day, that will avoid coming in the afternoon, after such a long session, to handle individual issues in either of those two half sessions. If my proposal is accepted, Fridays will be a fresh start to address only individual cases. In my opinion such a solution would be more productive. After all, during mc's, it is the judge who does most of the talking.

# Non-Responsive

As always, I remain

Very truly yours

(b) (6) usij



---

**From:** Smith, Gary (EOIR)  
**Sent:** Friday, October 15, 2010 4:51 PM  
**To:** (b) (6) (EOIR)  
**Subject:** RE: Master Calendar Hearings  
**Importance:** High

February 2, 2012, was intended in the first sentence of the second paragraph, rather than 2010.

---

**From:** Smith, Gary (EOIR)  
**Sent:** Friday, October 15, 2010 4:36 PM  
**To:** (b) (6) (EOIR)  
**Subject:** Master Calendar Hearings  
**Importance:** High

Judge (b) (6)

A review of your master calendars for the last six months reveals that you have routinely not been recording the cases on the master calendars. Recording of hearings is required by: § 240(b)(4)(C) of the INA, which provides that "a complete record shall be kept of all testimony and evidence produced at the hearing; 8 CFR § 1240.9 which provides that "the hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge;" and OPPM 03-06 (see first attachment), which provides that "Immigration Judges must maintain and preserve a thorough and complete record of the proceeding." In these cases, you have not been recording any of the hearing. Beginning immediately, I am directing you to record all master calendar hearings if the parties are present. This creates a record in the event the case is transferred to another judge, you are out sick and another judge takes over the case, or a question or issue arises concerning what occurred at the hearing. This is not optional and must be done. I will be checking to see that you record hearings.

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If you have any questions, you can call me, but I expect you to follow this direction.

**Gary W. Smith**

**Assistant Chief Immigration Judge**

**(703) 305-1247**

## EOIR FOIA Processing (EOIR)

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**From:** Scheinkman, Rena (EOIR)  
**Sent:** Thursday, August 25, 2011 2:12 PM  
**To:** Rosenblum, Jeff (EOIR); Keller, Mary Beth (EOIR)  
**Subject:** (b) (6) update - new ltr received today  
**Attachments:** Ltr from (b) (6) 8.24.2011.pdf

Jeff / Mary Beth:

I received the attached letter from Judge (b) (6) counsel today. He requests that "all charges" be dismissed "with prejudice" because four months have elapsed from the date of his original letter, and he has not received any substantive response.

This document is also a grievance of Judge (b) (6) performance rating of "IN" in the "Accountability for Organizational Results" element. The grievance is timely (30 work days), assuming his statement that (b) (6) received (b) (6) performance evaluation on July 18 is accurate. He has not requested a grievance meeting. According to the NAIJ contract, the grievance decision is due on October 24.

Jeff: Please let me know if there is anything you would like me to do with this matter prior to your return next week.

Thanks,  
Rena

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**From:** Rosenblum, Jeff (EOIR)  
**Sent:** Friday, August 19, 2011 9:44 AM  
**To:** Scheinkman, Rena (EOIR); Keller, Mary Beth (EOIR)  
**Subject:** Re: (b) (6)

That's all accurate. Thanks Rena.

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**From:** Scheinkman, Rena (EOIR)  
**Sent:** Friday, August 19, 2011 09:10 AM  
**To:** Keller, Mary Beth (EOIR)  
**Cc:** Rosenblum, Jeff (EOIR)  
**Subject:** RE: (b) (6)

Hi Mary Beth. I have not seen any additional correspondence from (b) (6) or (b) (6) lawyer. The last correspondence with opposing counsel that I see in the file is from David Margolis to (b) (6) counsel on 5/14/2011, stating: "Counsel: this will acknowledge receipt of your timely submission on behalf of your above named client. I will be touch with you re the next step."

(b) (5)

Jeff: Please feel free to weigh in, as you may have information I am not aware of.

Thanks,  
Rena

---

**From:** Keller, Mary Beth (EOIR)  
**Sent:** Friday, August 19, 2011 8:43 AM  
**To:** Scheinkman, Rena (EOIR)  
**Cc:** Rosenblum, Jeff (EOIR)  
**Subject:** (b) (6)

(b) (6)

Executive Office for Immigration Review  
Office of the General Counsel  
August 24, 2011  
Page 2

(EOIR or Agency), and the U.S. Department of Justice (DOJ) (The "Agreement"); and (V) Judge (b) (6) formal complaint of (1) a violation of 42 U.S.C. § 1983, to remedy Defendants' unlawful actions resulting in retaliation against plaintiff due to (b) (6) right to free speech; (2) a violation of 42 U.S.C. § 1985, to remedy Defendants' unlawful actions resulting in retaliation against plaintiff due to (b) (6) freedom of association, right to free speech, and/or political affiliation; (3) a violation of 42 U.S.C. § 1988, to remedy Defendants' unlawful actions resulting in retaliation against plaintiff due to (b) (6) freedom of association, right to free speech, and/or political affiliation; (4) a violation of 42 U.S.C. §§ 1983, 1985 and 1988, to remedy Defendants' unlawful actions resulting in proposing the suspension of Judge (b) (6) from (b) (6) employment in the State of (b) (6) (5) a violation of (b) (6) (b) (6) ("Retaliation"); (6) breach of express contract; (7) breach of the implied covenant of good faith and fair dealing; and (8) breach of implied contract.

To date, we have received no substantive response to any part of the five (5) sections of the May 6, 2011 correspondence. We note, respectfully that nearly four (4) months has elapsed since the date of our letter. During this time period, ACIJ Gary W. Smith has continued to serve as the Rating Official over Judge (b) (6).

Thus, due to the delay of the Agency, we respectfully request a dismissal of all charges with prejudice.

On July 18, 2011, Judge (b) (6) received (b) (6) Performance Appraisal Record. On July 28, 2011, Judge Smith contacted Judge (b) (6) and advised (b) (6) that (b) (6) was very happy with the way that Judge (b) (6) had taken care of reserved decisions and off-calendar cases and further shared that his satisfaction with Judge (b) (6) explained why he was giving Judge (b) (6) an overall rating of Satisfactory.

Despite this conversation, the Performance Appraisal Review does criticize Judge (b) (6) and note a continued backlog of cases and an inability to "get (b) (6) rulings and decisions done in a timely manner. This is despite (b) (6) having given many cases throughout the appraisal period to the judicial law clerks to draft complete decisions for (b) (6) Judge Smith rated Judge (b) (6) as Improvement Needed in Accountability for Organizational Results. We have acquired and attach the reports for Judge (b) (6) performance during the evaluation period. The empirical evidence belies Judge Smith's contentions. During the period in question, Judge (b) (6) completed a total of 1,894 cases. As of the date of the report, Judge (b) (6) off calendar reports reflect only 15 cases pending, including reserved decisions.

11467

(b) (6)

(b) (6)

Executive Office for Immigration Review  
Office of the General Counsel  
August 24, 2011  
Page 3

Contrary to the statement that Judge Smith made, that notwithstanding cooperation by him and the court administrator, Judge (b) (6) still has problems completing (b) (6) cases, the reports clearly reflect a completely different picture. As mentioned earlier, Judge Smith's oral representations to Judge (b) (6) on July 28, 2011, contradict Judge Smith's written assessments. The ambiguities and contradictions result in extreme unfairness to Judge (b) (6) and, we respectfully submit, feed the current work environment that is rife with instability and hostility.

Please accept this as Judge (b) (6) grievance. First, we incorporate herein the prior submissions and all documents as reasons to grieve the Performance Appraisal Record. Second, we would note that despite the fact that Judge (b) (6) had approximately 125 cases reserved out of his 2,000 cases pending, as of May 2011, (b) (6) has only 10 cases reserved. In fact, during the recent months, Judge (b) (6) has completed more cases than the other judges on the bench. Thus, the Final Evaluation should have not included the criticism contained therein and is objected to accordingly.

We thank you for your courtesies.

Very truly yours

(b) (6)

for the Firm

(b) (6)ms  
Encls.

cc: The Hon. Michael C. McGoings, Deputy Chief Immigration Judge, Office of the Chief Immigration Judge, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041 (w/ encls. via Regular Mail)

Dana Leigh Marks, President, National Association of Immigration Judges , 120 Montgomery Street, Suite 800, San Francisco, CA 94104 (w/ encls. via Regular Mail)

The Hon. (b) (6) IJ (w/ encls. via email)

11468

(b) (6)

(b) (6)

# Completion Cases Summary Report

Completed From: 07/01/2009 To: 08/08/2011

Base City:	Hearing Location	DEP	EXC	REC	CFR	CSR	AOC	RMV	CDR	Total
(b) (6)	(b) (6)	81	2	2	0	0	2	1,805	0	1,894
(b) (6)	(b) (6)	81	2	2	0	0	2	1,805	0	1,894
Completed Cases for Hearing Location		81	2	2	0	0	2	1,805	0	1,894
Total Completed Cases for Base City		81	2	2	0	0	2	1,805	0	1,894

# Completion Cases Summary Report Completed From: 08/02/2010 To: 08/08/2011

Base City (b) (6)  
Hearing Location: (b) (6)

IJ Code	IJ Name	DEP	EXC	REC	CFR	CSR	AOC	RMV	CDR	Total
	(b) (6)	49	1	2	0	0	1	888	0	942
	Completed Cases for Hearing Location	49	1	2	0	0	1	888	0	942
	Total Completed Cases for Base City	49	1	2	0	0	1	888	0	942

Page 1

Tuesday, August 16, 2011

# Completion Cases Summary Report

Completed From: 08/02/2010 To: 08/08/2011

Base City: (b) (6)

Hearing Location: (b) (6)

ID Code

ID Name

DEP	EXC	REC	CFR	CSR	AOC	RMV	COR	Total
33	2	1	0	0	0	695	0	733
33	2	1	0	0	0	695	0	733
33	2	1	0	0	0	695	0	733

(b) (6)

(b) (6)

Completed Cases for Hearing Location

Total Completed Cases for Base City

Page 1

Tuesday, August 16, 2011



# Completion Cases Summary Report

Completed From: 08/02/2010 To: 08/08/2011

Base City: (b) (6)  
 Hearing Location: (b) (6)

U Code	U Name	DEP	EXC	REC	CFR	CSR	AOC	RMV	CDR	Total
	(b) (6)	27	2	0	0	0	0	977	0	1,005
Completed Cases for Hearing Location		27	2	0	0	0	0	977	0	1,006
Total Completed Cases for Base City		27	2	0	0	0	0	977	0	1,006

(b) (6)

(b) (6)

# Completion Cases Summary Report

Completed From: 08/02/2010 To: 08/08/2011

Base City:	Hearing Location:	LI Code	LI Name	DEP	EXC	REC	CFR	CSR	AOC	RMV	CDR	Total
(b) (6)	(b) (6)	(b) (6)	(b) (6)	4	1	0	0	0	0	1,057	1	1,065
Completed Cases for Hearing Location				4	1	0	0	0	0	1,057	1	1,065
Total Completed Cases for Base City				4	1	0	0	0	0	1,057	1	1,065

# Completion Cases Summary Report Completed From: 08/02/2010 To: 08/08/2011

Base City: NEW

Hearing Location: NEW

IJ Code	IJ Name	DEP	EXC	REC	CFR	CSR	AOC	RMV	CDR	Total
(b) (6)	(b) (6)	12	1	0	0	0	3	349	0	365
Completed Cases for Hearing Location		12	1	0	0	0	3	349	0	365
Total Completed Cases for Base City		12	1	0	0	0	3	349	0	365

Page 1

Monday, August 08, 2011

(b) (6)

page 1

## Immigration Judge Off-Calendar Report

As of DATE: 08/08/11

RECEIVED 08-11

City Location (b) (6)

er (b) (6)

OBC Date (b) (6)

Alien Name (b) (6)

Aug	Case ID	Received Date	Trans. In Date	Case Type	Last Hearing	Adj. Reason	Reserved Decision	Creation Type	Num of Off Cal. Days
(b) (6)	NAD	09/01/06		RMV	09/30/09		R		577
(b) (6)	SP	12/07/07		RMV	09/30/09	30	R		577
(b) (6)	SP	12/07/07		RMV	09/30/09		R		577
(b) (6)	FUG	08/27/07	08/30/07	RMV	10/20/09		R	Venue	657
(b) (6)	ALB	03/07/07	03/09/07	RMV	11/18/09		R	Venue	628
(b) (6)	RUS	04/17/06		RMV	11/18/09		R		628
(b) (6)	RUS	04/17/06		RMV	11/18/09		R		628
(b) (6)	RUS	04/17/06		RMV	11/18/09		R		628
(b) (6)	TAM	08/06/03	08/07/03	RMV	11/20/09		R	Venue	626
(b) (6)	TAM	08/06/03	08/07/03	RMV	11/20/09		R	Venue	626
(b) (6)	TAM	08/06/03	08/07/03	RMV	11/20/09		R	Venue	626
(b) (6)	SP	02/07/08		RMV	01/27/10		R	Appeal	558
(b) (6)	PUN	04/24/08		RMV	01/26/11	14			194
(b) (6)	ENG	11/06/09		RMV	02/24/11			Motion to Reopen	165
(b) (6)	HEX	04/21/09		DHP	04/29/11			Appeal	101

CASE ID: R16f6ba

- Elder Alien

TO-

P0012/0012

## EOIR FOIA Processing (EOIR)

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**From:** Stockton, Bette (EOIR)  
**Sent:** Thursday, May 05, 2011 8:15 PM  
**To:** Keller, Mary Beth (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6) (April 25, 2011)  
**Attachments:** BIA Complaint re Judge (b) (6) 4-5-11 A(b) (6) doc

Hi Mary Beth,

You won't believe what I found – a copy of my intake form and the action taken with Judge (b) (6). I will attach a copy and I have brought it up to date because after (b) (6) got my written memo we talked about the complaint personally. The one I have not completed yet is the most recent one I received from the BIA on Judge (b) (6) which I will get to you "pronto".

Bette

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**From:** Keller, Mary Beth (EOIR)  
**Sent:** Thursday, May 05, 2011 8:34 AM  
**To:** Stockton, Bette (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6) (April 25, 2011)

Well, pobody's nerfect! ☺  
My tongue has bite marks in a million spots!

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**From:** Stockton, Bette (EOIR)  
**Sent:** Thursday, May 05, 2011 10:52 AM  
**To:** Keller, Mary Beth (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6) (April 25, 2011)

Yes, I have written to and spoken with Judge (b) (6) but I inadvertently failed to fill out the intake form. I will do so some time today with my follow up info. (b) (6) was chagrined that said that it has made (b) (6) bit (b) (6) tongue on several occasions since then. Too bad I didn't learn to bit mine sooner now that my fits of impatience are coming through from 2009.

Bette

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**From:** Keller, Mary Beth (EOIR)  
**Sent:** Thursday, May 05, 2011 7:47 AM  
**To:** Moutinho, Deborah (EOIR); Stockton, Bette (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6) (April 25, 2011)

Good morning Bette,  
Any update on this one? I don't think we have an intake form on this yet.  
Tx.  
mtk

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**From:** Moutinho, Deborah (EOIR)  
**Sent:** Tuesday, April 05, 2011 2:29 PM  
**To:** Stockton, Bette (EOIR)  
**Cc:** Keller, Mary Beth (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6) (April 25, 2011)

(b) (5)

Robert D. Weisel  
Assistant Chief Immigration Judge  
26 Federal Plaza- Suite 1237  
NY, NY 10278

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**From:** Keller, Mary Beth (EOIR)  
**Sent:** Monday, May 14, 2012 10:17 AM  
**To:** Weisel, Robert (EOIR)  
**Cc:** Weil, Jack (EOIR)  
**Subject:** FW: Complaint against Immigration Judge (b) (6)

Bob,  
I got your voicemail on this complaint as well. I agree that oral counseling is in order if the below transpired as set forth. You'll have to take a listen to see, and get the judge's response. I am copying in Jack Weil because Jack already did some remedial training with Judge (b) (6) and also did some remedial training of another judge who had some issues with treating sexual orientation cases appropriately. This is actually probably more an issue with the masters and asylum confidentiality matters generally. I think this is a bigger problem than just this judge; I have encountered it a couple of times, and wonder if we need some retraining on this generally. There isn't really an exception to the confidentiality of an asylum application for the Master as far as I can tell. I understand that difficulty of managing it, but, that's probably something we could address with training.  
Mtk

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**From:** IJConduct, EOIR (EOIR)  
**Sent:** Friday, May 11, 2012 8:32 AM  
**To:** Weisel, Robert (EOIR); Keller, Mary Beth (EOIR)  
**Subject:** FW: Complaint against Immigration Judge (b) (6)

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**From:** (b) (6)  
**Sent:** Thursday, May 10, 2012 4:14 PM  
**To:** IJConduct, EOIR (EOIR)  
**Subject:** Complaint against Immigration Judge (b) (6)

Dear Assistant Chief Immigration Judge for Conduct and Professionalism,

I am hereby lodging this formal complaint against Judge (b) (6) of (b) (6)

During Master Calendar calls, Judge (b) (6) routinely asks attorneys in open court to state a client's "theory of the case"—including, and always, cases which are asylum/WOR/CAT based. I refuse to do so, citing confidentiality. I direct the court's attention to the I-589 and/or supporting statement already contained within the file should (b) (6) require additional information. It is my firm belief that an individual's private or confidential information should not be stated in a non-closed environment, in front of a group of individuals who are not parties to the case, and that the Immigration Judge acts inappropriately when (b) (6) does so. The announcement of certain private details might imperil the Respondent and attorneys should not be compelled to disclose them.

Today, May 10, 2012, at 1:30 I appeared before IJ (b) (6) for a first Master Calendar for my client who is seeking asylum. The case had been originally transferred from the Immigration Court in (b) (6) (on DHS' motion and over my objection) and was therefore in a very advanced state. We had been scheduled for a merits and had previously submitted Form I-589, the respondent's detailed statement, all supporting documentation and country condition research, an expert statement, and a pretrial memoranda. In short, the case was done and ready for a merits.

I was prepared for IJ (b) (6) to ask for the "theory of the case" to which I was prepared to respond "membership in a particular social group," then refer (b) (6) to the documentation in the file. Before that happened Judge (b) (6) simply announced "I see this is a sexual orientation claim."

5/16/2012

date	action	initials
7/31/12	Attorney (b) (6) requests meeting with ACIJ seeking me to order IJ (b) (6) to continue a case now set for 8/8/2012. Met with him and he outlined his complaint. See memo below of discussion held. I stated to the atty that I would review the DAR and respond to him before the 8/8/12 hearing date now set.	
8/1/12	DAR recording was not available for review until today. See memo below for my observations.	
8/2/12	Held a face-to-face meeting with IJ (b) (6). See memo below for discussion. Note to report: Further info to be added to this report upon my attendance or review of the DAR of this hearing to be held on 8/8/12.	
8/6/12	Contacted atty (b) (6) by phone stating the case remained set for hearing and that as I stated before --- he can renew his continuance motion, but he should be prepared to present his client's case if required to do so. He interjected that he did ultimately file the witness list and add'l support docs later that day of 7/31/12. I stated that it would have been better if he had done so that morning which would have avoided the confrontation that morning. Nevertheless, I did note to him that my review of the record indicated to me <u>that he initiated a confrontation with IJ</u> at the outset of the hearing <u>to deflect from his being unprepared to provide the witness and docs he was directed to do that day, then compounding his failures by being initially unresponsive in explaining his failure to do so, then being equivocal and even disrespectful in his tone and words to the IJs legitimate inquiries.</u> I stated that I would get a report from IJ (b) (6) about the status of the case after his 8/8/12 hearing with (b) (6). Finally, I stated he would be getting a letter from me. (See attached letter.)	
8/6/12	Spoke to IJ (b) (6) on the telephone and informed (b) (6) of the above conversation with (b) (6). (b) (6) conceded upon further reflection that (b) (6) should have handled (b) (6) better and could have maintained control of (b) (6) court in a different way. (b) (6) admitted that (b) (6) response to his conduct and words were not the best. (b) (6) plans to start the hearing, but does not plan to complete the hearing that day. Although I found no error by IJ (b) (6) in (b) (6) legal rulings, but I did caution (b) (6) about the questionable reaction and verbal response made to the atty's lack of forthrightness and preparation, his unresponsive and disrespectful response to valid questions (b) (6) put to him. I reminded (b) (6) that (b) (6) past history was well known to (b) (6) based attys (Atty (b) (6) prefaced his discussion with me with that fact) who would try to bait (b) (6) into reacting and responding inappropriately in order to deflect their failures by getting (b) (6) to say or do something inappropriate. The words and tone (b) (6) used in responding to the atty's question as to the reason for setting the hearing to Aug 8 (although ultimately not prejudicial) did not portray the best judicial temperament. Non-Responsive	
8/9/12	IJ (b) (6) transmitted that the case proceeded on 8/8/12 with atty (b) (6)	

**Non-Responsive**







5. I told (b) (6) to report to me what happens on the 8/8/12 hearing. I did indicate what would have been the better course, i.e. require Rs counsel at the next hearing to file the witness list (explain to client he was being detained and case delayed due to atty's request and also failure to file docs needed to support his COR); require evidence of criminal court case and results of next hearing and reset case to after that 8/10/12 hearing.
6. We ended by discussing what other courses of action (b) (6) could have taken that would have been less reactionary.

## 7 Non-Responsive

Second DISCUSSION with atty (b) (6) 8/6/12 - Contacted atty (b) (6) by phone stating the case remained set for hearing and that as I stated before --- he can renew his continuance motion, but he should be prepared to present his client's case if required to do so. He interjected that he did ultimately file the witness list and add'l support docs later that day of 7/31/12. I stated that it would have been better if he had done so that morning which would have avoided the confrontation that morning. Nevertheless, I did note to him that my review of the record indicated to me that he initiated a confrontation with IJ at the outset of the hearing by his being unprepared to provide the witness and docs he was directed to do that day, then compounding his failures by being initially unresponsive in explaining his failure to do so, then being equivocal and even disrespectful in his tone and words to the IJ's legitimate inquiries. I stated that I would get a report from IJ (b) (6) about the status of the case after his 8/8/12 hearing with (b) (6). Finally, I stated he would be receiving a letter from me.

Second DISCUSSION with IJ (b) (6) 8/6/12 - Subsequently spoke to IJ (b) (6) on the telephone and informed (b) (6) of the above conversation with (b) (6). (b) (6) conceded that upon further reflection (b) (6) should have handled (b) (6) better and could have maintained control of (b) (6) court in a different way as opposed to reacting to counsel's confrontational nature. (b) (6) admitted that (b) (6) response to his conduct and words were not the best. (b) (6) plans to start the hearing on 8/8/12, but does not plan to complete the hearing that day. (b) (6) will inform me after the hearing is completed how it went.

RELEVANT Case Law reviewed - With the assistance of a AA/JLC I could not find any specific on point cases discussing whether it is an abuse of discretion to deny a continuance to allow for resolution of pending criminal proceedings which may affect the outcome of removal proceedings. It is clear that an IJ is not required to grant a continuance based on pending collateral relief in criminal court, where the conviction is final for immigration purposes, or based on pending criminal proceedings which have no effect on removal proceedings. See (b) (6) Matter of M-, 8 I&N Dec. 535, 537 (BIA 1960).

However, it is also clear that the Court must provide an explanation for denying the continuance and consider all relevant factors. See (b) (6). (b) (6) The (b) (6) Circuit looks to the following factors in determining whether the IJ abused discretion by denying a continuance: (1) the nature of the evidence excluded as a result of the

because it was charged as a ground of removability or because its existence was known to the Immigration Judge at the time of granting such relief-cannot thereafter be alleged as the sole factual predicate for a charge of removability. Cf. Matter of G-A-, 7 I&N Dec. 274, 275- 76 (BIA 1956). Otherwise an incentive would be created for the Government to withhold otherwise valid charges in order to exploit the fact that cancellation of removal can only be granted to an alien once. See section 240A(c)(6) of the Act.”

ACTIONS and CONCLUSIONS - Even assuming arguendo that IJ (b) (6) had legal grounds to initially deny to reset or continue the matter to a date after the 8/10/12 criminal state court proceeding because of counsel’s initially confrontational, unresponsive, equivocating and somewhat disrespectful tone and responses and failure to forthrightly explain his failures to prepare and file supporting docs and witness lists --- (b) (6) verbal response of “I don’t have to explain to you why. It’s just the same reason you gave me – I have things to do and that is the best I can do.”, displayed a tit-for-tat reaction that showed a loss of judicial composure despite counsel’s noted confrontational, uninformative and disrespectful tone and responses.

I counseled IJ (b) (6) to maintain (b) (6) judicial composure and not to as I stated, “Take the bait of a confrontational attorney that then places the adverse light upon (b) (6) actions as opposed to the attorney’s actions.” As noted, in the subsequent discussion on 8/6/12 (b) (6) acknowledged this counsel.

# Non-Responsive

Upon conclusion of the 8/8/12 hearing, I will write a formal response letter to the complainant atty.

LETTER to COMPLAINANT ATTORNEY

**U.S. Department of Justice**

Executive Office for Immigration Review

*Immigration Court*

Thomas Y. K. Fong  
Asst. Chief Immigration Judge

606 S. Olive Street, 15<sup>th</sup> Floor  
Los Angeles, California 90014

August 15, 2012

(b) (6)

**Moutinho, Deborah (EOIR)**

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**From:** Keller, Mary Beth (EOIR)  
**Sent:** Monday, August 20, 2012 11:48 AM  
**To:** Moutinho, Deborah (EOIR)  
**Subject:** FW: IJ Complaint In re (b) (6) (IJ (b) (6)) (complainant Atty (b) (6))  
**Attachments:** Complaint (b) (6) (IJ (b) (6)) atty (b) (6).doc

D -

When you get back, please run me everything in both dbs on Judge (b) (6). Thanks.  
mtk

-----Original Message-----

**From:** Fong, Thomas (EOIR)  
**Sent:** Thursday, August 16, 2012 4:08 PM  
**To:** Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)  
**Subject:** IJ Complaint In re (b) (6) (IJ (b) (6)) (complainant Atty (b) (6))

ACIJ Keller,

Attached is a completed IJ Intake Complaint form in the above matter. I have completed my review and conclusions. You will note that on the whole I found this complaint to be mostly without merit as you will note from my response letter to the complaining atty which is attached to this report.

Nevertheless, oral counseling was given cautioning the IJ about how (b) (6) response deflected from the atty's failures; and I further counseled (b) (6) on how (b) (6) could have responded to the atty's failures in a judicious manner and thereby maintain court control no matter how much provoked by an atty's failures, unresponsiveness, equivocations, disrespect or provocations.

Thomas Y.K. Fong  
Assistant Chief Immigration Judge  
Immigration Court/EOIR/DOJ  
606 South Olive Street, 15th Floor  
Los Angeles, CA 90014  
(213)894-2811  
[thomas.fong@usdoj.gov](mailto:thomas.fong@usdoj.gov)

## EOIR FOIA Processing (EOIR)

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**From:** Davis, John (EOIR)  
**Sent:** Monday, September 17, 2012 3:42 PM  
**To:** Moutinho, Deborah (EOIR)  
**Cc:** Keller, Mary Beth (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6) (September 5, 2012)

Hello Deborah,

Great seeing you last week! The training provided to IJ (b) (6) in August did cover this type of issues. Therefore we can conclude that corrective action has been taken and close the complaint – if MBK says so – and I think she will!

# Non-Responsive

Regards,

*John W. Davis*  
*Assistant Chief Immigration Judge*  
*3130 North Oakland Street*  
*Aurora, CO 80010*  
(b) (6)

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**From:** Moutinho, Deborah (EOIR)  
**Sent:** Monday, September 17, 2012 9:16 AM  
**To:** Davis, John (EOIR)  
**Cc:** Keller, Mary Beth (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6) (September 5, 2012)

Good Morning

Did the training provided to the IJ in Aug cover this issue as well, if so we could conclude this with corrective action already has been taken, correct?

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**From:** Moutinho, Deborah (EOIR)  
**Sent:** Tuesday, September 11, 2012 1:36 PM  
**To:** Davis, John (EOIR)  
**Cc:** Keller, Mary Beth (EOIR)  
**Subject:** FW: IJC Memo - Matter of (b) (6) (September 5, 2012)

Hello ACIJ Davis

The attached case concerning IJ (b) (6) is being forward to you per ACIJ Keller's request. Please complete the complaint in take sheet and return it to me so the complaint can accurately be added into the database.

If you would like to review the ROP please let me know and I would be happy to get the file from BIA and send it to you.

Thank you  
Deborah

## EOIR FOIA Processing (EOIR)

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**From:** Fong, Thomas (EOIR)  
**Sent:** Thursday, March 07, 2013 1:58 PM  
**To:** Moutinho, Deborah (EOIR); Keller, Mary Beth (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6)  
**Attachments:** Complaint (b) (6) referral.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Attached is the updated/completed IJ Complaint Intake form and the actions I took on this BIA referral. Oral counseling was given and the IJ was wholly receptive of the criticism of the BIA and the counseling given by this ACIJ. See last entry on Action Taken section of the form. No further action recommended.

Thomas Y.K. Fong  
Assistant Chief Immigration Judge  
Immigration Court/EOIR/DOJ  
606 South Olive Street, 15th Floor  
Los Angeles, CA 90014  
(213)894-2811  
[thomas.fong@usdoj.gov](mailto:thomas.fong@usdoj.gov)

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**From:** Fong, Thomas (EOIR)  
**Sent:** Wednesday, February 27, 2013 2:14 PM  
**To:** Keller, Mary Beth (EOIR)  
**Cc:** Moutinho, Deborah (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6)

You are correct, (b) (6) is a transfer IJ from the (b) (6) IC along with IJ (b) (6). But I submitted this correction with the last quarterly request for update IJ transfers, retirements, etc. I was wondering when this was coming down from you and Deb, as I saw it earlier from the BIA referral of IJ decisions sent to ACIJ's and already had started the "counseling and review" process yesterday and spoke with IJ (b) (6) initially on it already. So I am a little ahead of the game on this one. So I do not know if I have to "thank" Deborah for sending me this one today. But I guess I will say Thanks so much in this acknowledgement.

Thomas Y.K. Fong  
Assistant Chief Immigration Judge  
Immigration Court/EOIR/DOJ  
606 South Olive Street, 15th Floor  
Los Angeles, CA 90014  
(213)894-2811  
[thomas.fong@usdoj.gov](mailto:thomas.fong@usdoj.gov)

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**From:** Keller, Mary Beth (EOIR)  
**Sent:** Wednesday, February 27, 2013 1:50 PM  
**To:** Fong, Thomas (EOIR)  
**Cc:** Moutinho, Deborah (EOIR)  
**Subject:** FW: IJC Memo - Matter of (b) (6)

Hi Tom –

I think this judge is now in (b) (6)? Deborah would have forwarded this tomorrow but I wanted to mention that (b) (6) is not currently listed in the (b) (6) of judges on the Intranet.

Let me know if I have mislocated (is that a word?) (b) (6)

Thanks.

Mtk

*MaryBeth Keller*

Assistant Chief Immigration Judge

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**From:** Henderson, Suzette M. (EOIR)

**Sent:** Wednesday, February 27, 2013 4:25 PM

**To:** O'Leary, Brian (EOIR); Keller, Mary Beth (EOIR)

**Cc:** Minton, Amy (EOIR); Weil, Jack (EOIR); Moutinho, Deborah (EOIR); Henderson, Suzette M. (EOIR)

**Subject:** IJC Memo - Matter of (b) (6)

Good afternoon,

Please see the attached IJC Memo from Chairman David L. Neal. Thank you.

R/Suzette Henderson

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